

To the honorable members of the Judiciary Committee:

I am a lawyer who prosecuted cases in Boston for more than 13 years. I did pretty much every kind of work a prosecutor can do in a state without the death penalty. What I did the most was oppose the appeals of people who had been convicted of crimes, from the most minor to first degree murders. Sixteen of my appeals were for homicides – for cases where one or more people killed one or more people. I never lost a homicide case, including the one I wish I had.

Donnell Johnson was convicted of killing Germaine Goffigan, on Germaine's ninth birthday. Johnson was 16. Under the Massachusetts system at that time, juveniles, like Johnson, had two trials: first, by a juvenile court judge, and then, if convicted, by a full jury. Johnson was convicted of first degree murder in both cases. Not quite a year after Germaine was killed, a 17 year old named Keema Braxton, was stabbed to death at a party. Several people at the party testified that Dwayne Moore, who was 19 and much bigger than Braxton, had bullied Braxton into a fight, and then killed him. Even though Braxton ran from Moore and the fight, and Moore chased him down and stabbed him, the jury convicted Moore only of manslaughter, based on Moore's argument that he had acted in self defense – because, when Braxton was badly losing the fight, he pulled a knife. Moore took the knife away from Braxton, and used it to stab him to death. I was the lead attorney on Moore's appeal, and I assisted the lead attorney on Johnson's. Both convictions were affirmed.

Five years after he was convicted, Donnell Johnson was exonerated. A federal drug investigation led people who were charged with crimes carrying long sentences to come forward in their own self interests and reveal who had actually shot Germaine Goffigan. Johnson was in prison from the time he was 16 until he was 21, and he was not exonerated by DNA or any other test that we hope will be foolproof. Moore finished his 15 year manslaughter sentence in early 2010. A jury in Boston today is hearing closing arguments in Moore's trial for the first degree murder of 4 people, including a two year old named Amani Smith. Another man has testified that Moore, that witness, and the witness's cousin went to rob one of the victims of drugs and the proceeds from selling them, and, after the witness left, Moore shot the drug dealer and everyone else present, which included Amani and his 21 year old mother, who happened to be visitors at the apartment. Moore had been out of prison for about 6 months when Amani, his mother, and the others were shot to death.

Lawyers and judges have tremendous trust in, and respect for, the work and wisdom of juries. But juries, like every other part of the justice system, are made up of people, and people can make mistakes. I did, when I believed – based on what looked like very strong evidence – that Donnell Johnson had killed Germaine Goffigan, and that he was guilty of first degree murder. My view of the evidence in Moore's trial for killing Keema Braxton was that he should have been convicted of first degree murder, but the jury who actually heard the evidence, and saw the witnesses testify, found differently. If Massachusetts had had the death penalty then, Donnell Johnson, an innocent man, could have been eligible to have been sentenced to death. Dwayne Moore, who admitted that he had killed Keema Braxton, would not have been eligible, because he was convicted only of manslaughter.

I don't know what the jury that is about to deliberate on the question of Dwayne Moore's guilt will determine. I don't envy them their work. I do know that I am very glad that Donnell Johnson was not executed. I also know that a conviction for first degree murder in Massachusetts, which requires a mandatory life sentence, with no possibility of parole, protects the public at least as well as the death penalty does.

There are many reasons that I believe the death penalty is wrong, and I'm sure this committee will hear about all of them today. Each of those reasons by itself is sufficient reason to repeal the death penalty. But since we know, without any question, that innocent people get convicted of first degree murder, how can we possibly continue to support our government taking the chance of killing innocent people?

Thank you very much for listening to my views,

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